RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C: § 121 and 372 to one of the following inventions:

1. Claims 1-12 and 36-37, drawn to a method of removing leukocytes.
2. Claims 25-33 and 38, drawn to a leukocyte removal filter.
3. Claims 34-35, drawn to a blood extracorporeal circulation device.

The Examiner further requires the election of one species in each of the following two classes of species:

- Flexible resin, referring to the instant specification, paragraph [0092] of US 2006/0184085;
- Leukocyte containing liquid: whole blood, red cell concentrate, platelet concentrate, platelet rich plasma, or platelet poor plasma.

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect, with traverse, the invention set forth in **Group 2, claims 25-33 and 38**, drawn to a filter. Further, Applicants elect, with traverse, the species **whole blood** as type for leukocyte-containing liquid, and **polyvinyl chloride** as type for flexible resin. All claims are generic and readable on the elected species.

TRAVERSE

Notwithstanding the election of Group 2, and the species whole blood and polyvinyl chloride, in order to be responsive to the requirement for election of species, Applicants respectfully traverse the requirement for restriction.

Applicants note that this application is a national stage application, and therefore under unity of invention practice the Examiner must establish that the claims lack unity of invention under PCT Rule 13.1 and 37 C.F.R. 1.475.

In particular, the Examiner is reminded that in determining unity of invention, the criteria set forth in 37 C.F.R. 1.475 must be considered. Specifically, Applicants note that 37 C.F.R. 1.475 provides:

> Unity of invention before the International Searching Authority, the International Preliminary Examining Authority, and during the national stage.
>
> (a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.
>
> (b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
>
> (1) A product and a process specially adapted for the manufacture of said product; or
>
> (2) A product and process of use of said product; or
>
> (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
>
> (4) A process and an apparatus or means specifically designed for carrying out the said process; or
>
> (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

(c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.

(d) If multiple products, processes of manufacture, or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).

(e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Thus, in stating the restriction requirement, the requirement must state why unity of invention is lacking under 1.475.

The requirement only points to PCT Rule 13.1 and PCT Rule 13.2, merely asserting that Groups 1 to 3 lack the same or corresponding special technical features and therefore belong to patentable independent and distinct inventions, but the requirement does not provide any reason for this conclusion.

Applicants respectfully submit that 37 C.F.R. § 1.475 requires that to support a lack of unity of invention the requirement must establish that there is not a special technical feature among the pending claims, including a showing that the special technical feature does not define a contribution over the prior art. The requirement is improperly silent with respect to at least this requirement of 37 C.F.R. § 1.475, and is therefore without appropriate basis.

Accordingly, the restriction requirement is not proper, and should be withdrawn.

In view of the foregoing, it is respectfully requested that the Examiner reconsider the requirement for restriction, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application.

CONCLUSION

For the reasons discussed above, it is respectfully submitted that the Examiner's requirement is improper and should be withdrawn.

Withdrawal of the requirement for restriction with the examination of all claims pending in this application is respectfully requested.

Favorable consideration with early allowance of the pending claims is most earnestly requested.

If the Examiner has any questions, or wishes to discuss this matter, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
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